

*FCC Received December 29, 1993 @ 2:00 p.m.  
Donna A. Bradshaw*

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**TRANSCRIPT OF PROCEEDINGS**  
  
Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554  
  
**IN RE APPLICATIONS OF:**  
  
**DARRELL BRYAN**  
  
**SBH PROPERTIES, INC.**  
  
**Tusculum, Tennessee**

MM DOCKET NO. 93-241

RECEIVED

JAN 10 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**DATE OF CONFERENCE: December 16, 1993** **VOLUME: 1**  
**PLACE OF CONFERENCE: Washington, D.C.** **PAGE: 1-9**

**FREE STATE REPORTING, INC.**  
Court Reporting Depositions  
D.C. Area (301) 261-1902  
Balt. & Annap. (410) 974-0947

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In re Applications of: )

DARRELL BRYAN )

SBH PROPERTIES, INC. )

Tusculum, Tennessee )  
-----)

MM DOCKET NO. 93-241

The above-entitled matter come on for pre-hearing  
conference pursuant to Notice before Judge John M. Frysiak,  
Administrative Law Judge, at 2000 L Street, N.W., Washington,  
D.C., in Courtroom No. 4, on Thursday, December 16, 1993, at  
9:00 a.m.

APPEARANCES:

On behalf of SBH Properties, Inc.:

GARY S. SMITHWICK, Esquire  
Smithwick & Belendiuk, P.C.  
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Suite 510  
Washington, D.C. 20036  
(202) 785-2800

On behalf of Darrell Bryan:

J. RICHARD CARR, Esquire  
P.O. Box 70725  
Chevy Chase, Maryland 20813  
(301) 656-7053

On Behalf of Chief, Mass Media Bureau

ROBERT F. ZAUNER, Esquire  
2025 M Street, Suite 7212  
Washington, D.C. 20554

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25 Hearing began: 9:00 a.m.	Hearing Ended: 9:08 a.m.

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## P R O C E E D I N G S

JUDGE FRYSIAK: This is a pre-hearing conference for Tusculum, Tennessee. May we have your appearances noted for the record?

MR. SMITHWICK: Your Honor, I'm Gary Smithwick of Smithwick & Belendiuk and I'm sitting in for Timothy Brady, counsel for SBH Properties, Inc.

MR. CARR: Richard Carr on behalf of Darrell Bryan, Your Honor.

MR. ZAUNER: Robert A. Zauner on behalf of the Chief, Mass Media Bureau.

JUDGE FRYSIAK: Well, we have a very short agenda today, simply to discuss possible settlement and perhaps clear up any problems you might have. The first item on the agenda is the question of settlement.

MR. CARR: Your Honor, I received a fax yesterday from Darrell Bryan which was a copy of a letter that he had written on December 8th to Mr. William Seaver of SBH putting forth two settlement options. I was unaware that the letter had been written, Your Honor, and he tells me that he has not yet had a response from Mr. Seaver. We don't even know whether there will be a response, but he, he put forth a proposal with two different settlement options. Other than that, I don't think there has been any progress towards settlement.

1 JUDGE FRYSIK: Mr. Smithwick, do you have anything  
2 to add?

3 MR. SMITHWICK: Your Honor, Mr. Brady briefed me on  
4 the case and indicated that there had been an exploration of  
5 settlement, but it has not been fruitful. I don't know if  
6 that includes this letter from Mr. Bryan or not. I will talk  
7 with Mr. Brady when the pre-hearing conference is over and ask  
8 him to follow up on Mr. Carr's comment and, and we can advise  
9 the Court if, if it's appropriate.

10 JUDGE FRYSIK: Okay. Is there anything else for us  
11 to discuss today?

12 MR. SMITHWICK: One -- well, I guess there's two  
13 things. There's the joint engineering for one and then  
14 there's one other point which I could raise after that. Or I  
15 --

16 MR. ZAUNER: Or --

17 MR. SMITHWICK: Mr. Brady asked me to ask for the  
18 Court's instruction on one particular point, that is he says  
19 at this point he doesn't know if it will be necessary to  
20 request a rebuttal session or to provide the rebuttal evidence  
21 in the case. He doesn't know at this point. But he was  
22 wondering what Your Honor's procedures would be in the event  
23 he wants to request a rebuttal case. Should he ask you to --  
24 ask you for it in writing and do it orally and so forth? Can  
25 you provide any guidance?

1 JUDGE FRYSIK: Well, I guess he won't know until he  
2 sees the direct case.

3 MR. SMITHWICK: Right. That's correct.

4 JUDGE FRYSIK: And I guess it's an issue that we  
5 really can't address until hearing date, so if there's any  
6 need for rebuttal, he can make his case orally as far as I'm  
7 concerned at the hearing.

8 MR. SMITHWICK: All right. Thank you, Your Honor.  
9 That's all from Mr. Brady.

10 MR. ZAUNER: Your Honor, the Hearing Designation  
11 Order indicates that --

12 JUDGE FRYSIK: I can't hear you.

13 MR. ZAUNER: The Hearing Designation Order indicates  
14 that there is a significant difference in the areas and  
15 populations that each of these applicants would serve, so we  
16 would request that a preliminary date be set for exchange of  
17 engineering exhibit and that the parties be directed to  
18 cooperate and obtain the joint engineering exhibit.

19 MR. CARR: Yes, I think that, that that would be  
20 appropriate, Your Honor.

21 MR. SMITHWICK: No opposition here either.

22 JUDGE FRYSIK: Mr. Zauner, I don't know whether  
23 you've seen the recent pleadings filed by -- I guess it was  
24 SBH. One of the issues that is asked by way of enlargement  
25 against Bryan is a violation of a section concerning

1 unmodulated transmitter operation and unmonitored. I don't  
2 see how that sits in with a -- within a comparative posture,  
3 you know, that I'm about to decide. I think more the issues  
4 -- that's Issue No. 1 and No. 2, I think, requested by SBH. I  
5 think those issues go more to enforcement rather than to a  
6 reflection on the, you know, proposed integration of the  
7 applicant. I wonder whether you might take a look at that and  
8 if you have any comments, why let me know.

9 MR. ZAUNER: Okay. Fine. I will do that.

10 JUDGE FRYSIK: Those are the -- altogether seven  
11 issues were requested. Only the two that I, that I am  
12 concerned about are the first two which deal with the  
13 unmodulated and unmonitored transmission on certain days in  
14 1993, as well as excessive power. I think that was the, the  
15 second one.

16 MR. ZAUNER: Has there been an opposition to that  
17 filed?

18 JUDGE FRYSIK: Pardon?

19 MR. ZAUNER: Has there been an opposition to that  
20 filed?

21 JUDGE FRYSIK: Yeah and a reply, as well.

22 MR. CARR: Yes and a reply.

23 JUDGE FRYSIK: A reply has just been filed  
24 recently.

25 MR. CARR: That's correct.

1 JUDGE FRYSIK: But if you -- if the Bureau has any  
2 comments on those two issues, I'd appreciate you filing them.

3 MR. ZAUNER: Okay. Thank you, Your Honor. I'll  
4 take a look at that.

5 JUDGE FRYSIK: All right. Anything else? We have  
6 a hearing set for March 1. Is that correct?

7 MR. CARR: That's correct, Your Honor.

8 JUDGE FRYSIK: All right. There are pending  
9 pleadings. I haven't had a chance to look at them except for  
10 the first couple of issues that I've just raised now with Mr.  
11 Zauner, but I'll get to them as soon as I can.

12 MR. CARR: There also was a supplement filed, Your  
13 Honor, asking for an additional issue which I have not yet had  
14 the opportunity to respond to.

15 JUDGE FRYSIK: All right. To the enlargement it  
16 was a supplement?

17 MR. CARR: There was a supplement filed.

18 JUDGE FRYSIK: I think that was a final additional  
19 issue --

20 MR. CARR: That's correct.

21 JUDGE FRYSIK: -- and that was failing to show a  
22 public file --

23 MR. CARR: That's correct, Your Honor.

24 JUDGE FRYSIK: -- to a researcher.

25 MR. CARR: That's right, but we have not had an



1 opportunity to respond to that.

2 JUDGE FRYSIAK: All right. But that's -- that  
3 wouldn't concern the Bureau.

4 MR. CARR: It does not concern the Bureau. That's  
5 correct.

6 JUDGE FRYSIAK: Okay.

7 MR. SMITHWICK: Your Honor, were you going to set a  
8 preliminary --

9 JUDGE FRYSIAK: Pardon?

10 MR. SMITHWICK: -- a date for the preliminary  
11 engineering or is that in an order that I'm not aware of?

12 JUDGE FRYSIAK: I didn't hear you.

13 MR. SMITHWICK: I thought I heard Mr. Zauner ask for  
14 a date for exchange for the preliminary engineering.

15 JUDGE FRYSIAK: Oh.

16 MR. SMITHWICK: Did -- isn't that correct, Mr.  
17 Zauner?

18 MR. CARR: Yes, Your Honor.

19 JUDGE FRYSIAK: Well, you want what, three weeks  
20 time to look at it?

21 MR. CARR: Three weeks.

22 JUDGE FRYSIAK: What did we, what did we set the  
23 time for, for petitions -- for the filing of exhibits? Let's  
24 see. We've got January 27th. Have you got a calendar handy,  
25 Mr. Zauner? What are three weeks before January 27th?

1 MR. CARR: January 27th is a Thursday.

2 JUDGE FRYSIK: All right. January 6th, would that,  
3 that sound good?

4 MR. ZAUNER: That sounds fine.

5 JUDGE FRYSIK: Is that a weekday? I guess it  
6 should be.

7 MR. CARR: January 6th would be a Thursday also.

8 JUDGE FRYSIK: All right. So we'll have -- we'll  
9 require that the applicants file a preliminary joint  
10 engineering exhibit on January 6th.

11 MR. SMITHWICK: Thank you, Your Honor.

12 JUDGE FRYSIK: All right. If there's nothing  
13 further, we stand adjourned then until the 1st of March.  
14 Thank you very much.

15 MR. CARR: Thank you.

16 MR. SMITHWICK: Thank you, Your Honor.

17 (Whereupon, the hearing was adjourned at 9:08 a.m. on  
18 December 16, 1993.)

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**CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER**

IN RE APPLICATIONS FOR TUSCULUM, TENNESSEE

**Name**

MM DOCKET NO. 93-241

**Docket No.**

WASHINGTON, D.C.

**Place**

DECEMBER 16, 1993

**Date**

We, the undersigned, do hereby certify that the foregoing pages, numbers 1 through 9, inclusive, are the true, accurate and complete transcript prepared from the reporting by DAVID L. BECKER in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

December 27, 1993

**Date**

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December 27, 1993

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